Supreme Court, U.S.
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No. 85-1897

IN THE

Supreme Court of the United States

October Term, 1985

WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

against

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN, as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Respondents.

Brief for all Respondents Except State of New York

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Question Presented.

Under the Due Process provisions of the Fourteenth Amendment, may a taxing authority convey land, previously conveyed to it without competitive bidding because of tax delinquencies thereon, for a sum in excess of the delinquencies and retain the entire proceeds of the sale?

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Petitioners,

vs.

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,.

Respondents.

Brief of all Respondents Except the State of New York.

Statement of the Case.

The tax delinquent lands of petitioners (i.e., Mac Kechnie) were conveyed without public bidding to the taxing agencies (i.e., Orange County, N.Y.) at a "tax sale" after a three-year redemption period expired, and thereafter, upon notice to the petitioners, were reconveyed to third parties for sums in excess of the amount of the delinquencies.

Petitioners admit notice of the assessment; an opportunity to "grieve" (or complain of) the assessment; notice of the resulting tax levy; notice of the tax delinquencies; notice of the impending expiration of the three-year redemption period, and notice of the impending resale to third parties by the counties.

There was never a "taking"* of any property by the counties only a conveyance to them in exchange for the amount of the delinquent tax and a subsequent resale by them to third parties.

Reason for Denying the Petition.

Petitioners admit there was no infirmity in the notice provisions of the New York Statutory scheme (cf. *Botens v. Aronauer,* 32 N.Y.2d 243, appeal dismissed 414 U.S. 1059).

Petitioners focus only upon the retention by the counties of the entire proceeds of a resale by them to third parties for sums in excess of the delinquency (after a con-

*A "just compensation" concept aptly distinguished from a case such as that at bar in *Balthazar v. Mari Ltd.,* 301 F.Supp. 103, affirmed by this Court at 396 U.S. 114 [ft. nt. 6].

veyance to them in exchange for the amount of the delinquency). Petitioners imply that the Fourteenth Amendment requires a public bidding process for their former lands prior to a "tax sale" to the counties and a return to them of the sum received by the counties in excess of the delinquency after they sold the properties to third parties.

This issue has been decisively settled by this Court against the petitioners' position on several occasions and there is now no need for further review. See *Balthzar v. Mari Ltd.,* 301 F.Supp. 103, aff'd 396 U.S. 114 (1969); *Nelson v. City of New York,* 352 U.S. 103 (1956), and *Chapman v. Zobeline,* 237 U.S. 135 (1915). This issue, squarely decided by this Court on at least three occasions, is not one of general importance now wanting of settlement by this Court. Nor, contrary to the petitioners' assertions, is there any conflict between either the Courts of Appeals on this issue or between this Court and the Courts of Appeals or the highest Court of any state. The petitioners' attempt to construct such is contrived at best. The counties' actions in safeguarding their interest in this case are not outside constitutional obligations.

The petitioners' reliance upon *United States v. Lawton,* 110 U.S. 146 (1884), is inappropriate. There, as noted by this Court in *Nelson,* and by the New York Court of Appeals below, the case turned on a statute that explicitly required the return of surplus received at a tax sale to the delinquent taxpayer. No such statute is at hand and the *Lawton* case, as noted by Chief Justice Warren "is without constitutional overtones."

There is no compelling reason in this case to grant the writ under the guidelines set forth in Rule 17(a) or (b) of this Court.

CONCLUSION.

The petition should be dismissed.

Dated: May 29, 1986

Respectfully submitted,

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